

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

The Authors Guild Inc.;
Association of American
Publishers Inc.; et al.,

Plaintiffs,

Lewis Hyde; Harry Lewis;
Nicholas Negroponte, Charles
Nesson,

*Plaintiff-
Intervenors,*

v.

Google Inc.,

Defendant.

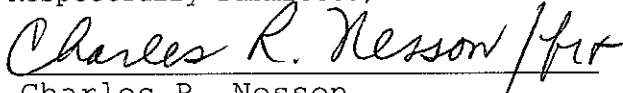
Case No. 05-cv-8136-DC

MOTION TO INTERVENE AS PLAINTIFF-INTERVENOR PURSUANT TO
F.R.C.P. 24 (A)

For the reasons set forth below and in the accompanying Memorandum, Lewis Hyde, Harry Lewis, Nicholas Negroponte and Charles Nesson ("Intervenors") hereby move to intervene in the above-captioned case as a party-plaintiff, pursuant to Rule 24 of the Federal Rules of Civil Procedure; and to file the attached Complaint-in-Intervention.

Wherefore, Intervenors respectfully request that the Court grant the Motion to Intervene and direct the Clerk of the Court to file the attached Complaint-in-Intervention.

Respectfully submitted,



Charles R. Nesson
1575 Massachusetts Avenue
Cambridge, Massachusetts 02138
617-495-4609
nesson@law.harvard.edu

K.A.D. Camara
Camara & Sibley LLP

2339 University Boulevard
Houston, Texas 77005
713-893-7973
713-583-1131 (fax)
camara@camarasibley.com

Martin Garbus
Eaton & Van Winkle LLP
3 Park Avenue, 16th Floor
New York, New York 10016
Direct Dial: (212) 561-3625
Main Line: (212) 779-9910
Fax: (212) 779-9928
Email: mgarbus@evw.com

Dated: September 8, 2009

The Authors Guild Inc.;
Association of American
Publishers Inc.; et al.,

Plaintiffs,

Lewis Hyde; Harry Lewis;
Nicholas Negroponte, Charles
Nesson,

Plaintiff-

Intervenors,

v.

Google Inc.,

Defendant.

Case No. 05-cv-8136-DC

COMPLAINT IN INTERVENTION

The Intervenors.

1. Lewis Hyde is the Richard L. Thomas Professor of Creative Writing at Kenyon College and was formerly director of the creative-writing program at Harvard University. The University of Michigan library lists eight books authored by Professor Hyde that were presumably digitized by Google in the course of their creation of Google Book Search. These include *The Gift* (Random House, 1983), *This Error is the Sign of Love* (Milkweed Editions, 1988), and *Trickster Makes this World* (Farrar, Straus, 1998).

2. Harry Lewis is the Gordon McKay Professor of Computer Science at Harvard University and was formerly Dean of Harvard College. He is the author of *Excellence Without a Soul: How a Great University Forgot Education* (Public Affairs, 2006) and, co-author with Hal Abelson and Ken Ledeen of *Blown to Bits: Your Life, Liberty, and Happiness After the Digital Explosion* (Addison-Wesley, 2008).

3. Nicholas Negroponte is the Jerome B. Wiesner Professor of Media Technology at MIT, the Chairman Emeritus of the MIT Media Laboratory, and a founder of both Wired Magazine

and the One Laptop Per Child Association. He is the author of *Being Digital* (Vintage Books, 1995).

4. Charles Nesson, is the William F. Weld Professor of Law at Harvard University, the founder of the Berkman Center for Internet & Society at Harvard, and co-author with Eric Green and Peter Murray of *Evidence*, (Aspen, 2000).

Complaint

5. The interests (and those interests of fair use and open access to knowledge of the reading public that Intervenor support) are not being adequately represented by the settling parties.

6. The settling parties are proposing to charge the public (including Intervenor) royalties for the use of orphaned works that do not belong to them, and to convert the proceeds from such charges to their own use. Users of orphaned works and the public domain are entitled to the revenue generated by orphaned works.

7. The Settling Parties are proposing an agreement that restrains trade in digitized books by establishing a substantial monopoly on all out-of-print books and a total monopoly on the subset of out-of print books that are orphan works.

8. The Settling Parties are proposing to establish a Copyright Registry Board of Directors with a Mandated Representation on the public interest in fair use.

9. Disposing of this action by approving the proposed settlement will, as a practical matter, impair and impede the Intervenor's ability to protect their interest.

Wherefore, Intervenor seek as immediate relief that the Court:

(1) deny approval to the Proposed Settlement;

(2) recognize Intervenor's claim as of right to intervene in this case and admit them as parties for purposes of all further proceedings and settlement negotiations, and

(3) declare the rights and legal relations of the parties as described in the memorandum in support of Intervenor's motion to intervene and in all other respects related to Google Books and any now- or later-proposed settlement."

Respectfully submitted,



Charles R. Nesson
1575 Massachusetts Avenue
Cambridge, Massachusetts 02138
617-495-4609
nesson@law.harvard.edu

K.A.D. Camara
Camara & Sibley LLP
2339 University Boulevard
Houston, Texas 77005
713-893-7973
713-583-1131 (fax)
camara@camarasibley.com

Martin Garbus
Eaton & Van Winkle LLP
3 Park Avenue, 16th Floor
New York, New York 10016
Direct Dial: (212) 561-3625
Main Line: (212) 779-9910
Fax: (212) 779-9928
Email: mgarbus@evw.com

Dated: September 8, 2009

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2009, I caused this Motion to Intervene to be served by CM/ECF on counsel of record as follows:

Joseph M. Beck
Alex Seth Fonoroff
Ronald Lee Raider
Kilpatrick Stockton LLP
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309

Michael J. Boni
J. Kate Reznick
Joanne E. Zack
Boni & Zack LLC
15 St. Asaphs Road
Bala Cynwyd, PA 19004

Adam Howard Charnes
Kilpatrick Stockton LLP
1001 West Fourth Street
Winston-Salem, NC 27101

Sanford P. Dumain
Milberg LLP
One Pennsylvania Place
New York, NY 10119

Jeffrey A. Conciatori
Quinn Emanuel Urquhart Oliver & Hedges LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010

Daralyn Jeannine Durie
Joseph C. Gratz
Duri Tangri Lemley Roberts & Kent LLP
332 Pine Street, Suite 200
San Francisco, CA 94104

Laura Helen Gundersheim
Bernstein Litowitz Berger & Grossman LLP
1285 Avenue of the Americas
New York, NY 10019

Bruce P. Keller
Debevoise & Plimpton LLP
919 Third Avenue, 31st Floor
New York, NY 10022

Hadley Perkins Roeltgen
Kohn, Swift & Graf PC
One South Broad Street, Suite 2100
Philadelphia, PA 19107

Daniel Joseph Kornstein
Mikaela Ann McDermott
Kornstein Veisz Wexler & Pollard LLP
757 Third Avenue
New York, NY 10017


Charles Nesson